

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

TINA LYNN FOX	§	
v.	§	CIVIL ACTION NO. 6:13cv622
		Crim. No. 6:10cr37
UNITED STATES OF AMERICA	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Movant Tina Lynn Fox, proceeding *pro se*, filed this motion to vacate or correct her sentence under 28 U.S.C. §2255, complaining of the validity of her conviction. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Fox was convicted in a jury trial of conspiracy to manufacture methamphetamine and multiple counts of possession of a List 1 chemical with intent to manufacture methamphetamine. She also pleaded guilty to one count of possession of methamphetamine. Fox received a total sentence of 135 months in prison. She took a direct appeal, arguing that the evidence was insufficient to support a conviction, but the Fifth Circuit held that there was “ample support for her conviction beyond a reasonable doubt on all counts of conviction.” U.S. v. Fox, 487 Fed.Appx. 165, 2012 WL 3655342 (5th Cir., August 27, 2012).

In her motion to vacate or correct sentence, Fox argued that she received ineffective assistance of counsel and that her rights under the Sixth Amendment were violated in light of the Supreme Court’s decision in Alleyne v. United States, 133 S.Ct. 2151, 2155 2013). The Government answered Fox’s motion, and Fox filed a response to the answer.

After review of the pleadings, the Magistrate Judge issued a Report recommending that Fox's motion to vacate sentence be denied, determining that Fox's counsel was not ineffective and that Alleyne is not retroactively applicable on collateral review. Fox received a copy of the Magistrate Judge's Report on April 21, 2014, but filed no objections thereto; accordingly, she is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has carefully reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. See United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. [12](#)) is **ADOPTED** as the opinion of the District Court. It is further


ORDERED that the above-styled motion to vacate or correct sentence is hereby **DISMISSED WITH PREJUDICE**. It is further

ORDERED that the Movant Tina Lynn Fox is hereby **DENIED** a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby **DENIED**.

It is SO ORDERED.

SIGNED this 27th day of May, 2014.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE